

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS**BRIAN DONEGAN**

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

(215) 540-8888

DEFENDANTS**NCO FINANCIAL SYSTEMS, INC**

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State ☐ 1 ☐ 1

Incorporated or Principal Place of Business In This State

PTF DEF

☐ 4 ☐ 4Citizen of Another State ☐ 2 ☐ 2

Incorporated and Principal Place of Business In Another State

☐ 5 ☐ 5Citizen or Subject of a Foreign Country ☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6**IV. NATURE OF SUIT**

(Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13950) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692

Brief description of cause:
Fair Debt Collection Practices Act**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation:

4/8/11

DATE

SIGNATURE OF ATTORNEY OF RECORD

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Brian Donegan

CIVIL ACTION

v.

NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

4/8/11
Date

Craig Ther Kimmel
Attorney-at-law

Brian Donegan
Attorney for

215-540-8888

877-788-2864

kimmel@creditlaw.com

Telephone

FAX Number

E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 402 Castleton View Road, Castleton, VA 22716

Address of Defendant: 507 Prudential Road, Horsham, PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts

2. ☐ FELA

3. ☐ Jones Act-Personal Injury

4. ☐ Antitrust

5. ☐ Patent

6. ☐ Labor-Management Relations

7. ☐ Civil Rights

8. ☐ Habeas Corpus

9. ☐ Securities Act(s) Cases

10. ☐ Social Security Review Cases

11. ☒ All other Federal Question Cases 15 U.S.C. 1692
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts

2. ☐ Airplane Personal Injury

3. ☐ Assault, Defamation

4. ☐ Marine Personal Injury

5. ☐ Motor Vehicle Personal Injury

6. ☐ Other Personal Injury (Please specify)

7. ☐ Products Liability

8. ☐ Products Liability — Asbestos

9. ☐ All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Ther Kimmel, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 4/8/11 Craig Ther Kimmel
Attorney-at-Law

57105
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/8/11 Craig Ther Kimmel
Attorney-at-Law

57105
Attorney I.D.#

PLAINTIFF'S COMPLAINT

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
2 under the laws of the United States.

3
4 3. Defendant conducts business and has an office in the Commonwealth
5 of Pennsylvania and therefore, personal jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

7 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and
8 2202.
9

10 PARTIES

11 6. Plaintiff is a natural person residing in Castleton, Virginia, 22716.

12 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
13 1692a(3).
14

15 8. Also, Plaintiff is a person granted a cause of action under the
16 FDCPA. See 15 U.S.C. § 1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS
17 18687 (E.D. Pa. Dec. 22, 2000).
18

19 9. Defendant is a national debt collection company with its corporate
20 headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

21 10. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §
22 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.
23
24
25

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

PLAINTIFF'S COMPLAINT

1 deceptive, or misleading representation or means in connection with the collection
2 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair
3 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §
4 1692f. The FDCPA is designed to protect consumers from unscrupulous
5 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
6 unconscionable collection methods, conduct which harasses, oppresses or abuses
7 any debtor, and any false, deceptive or misleading statements in connection with
8 the collection of a debt.
9
10

11 13. In enacting the FDCPA, the United States Congress found that
12 “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt
13 collection practices by many debt collectors,” which “contribute to the number of
14 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of
15 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
16 laws and procedures for redressing debt collection injuries to be inadequate to
17 protect consumers. 15 U.S.C. § 1692b.
18
19

20 14. Congress enacted the FDCPA to regulate the collection of consumer
21 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
22 abusive debt collection practices by debt collectors, to insure that debt collectors
23 who refrain from using abusive debt collection practices are not competitively
24
25

1 disadvantaged, and to promote consistent State action to protect consumers against
2 debt collection abuses.” 15 U.S.C. § 1692e.

3
4 **FACTUAL ALLEGATIONS**

5 15. At all relevant times, Defendant was attempting to collect an alleged
6 consumer debt from Plaintiff.

7 16. The alleged debt at issue arose out of transactions, which were
8 primarily for personal, family, or household purposes.
9

10 17. Beginning in or around March 2010 and continuing through June
11 2010, Defendant made continuous and repeated calls to Plaintiff seeking and
12 demanding payment for an alleged consumer debt.
13

14 18. On a number of occasions, Plaintiff received phone calls and
15 messages on his answering machine from Defendant at the following phone
16 number: (800) 485-2202, which the undersigned has confirmed belongs to
17 Defendant.
18

19 19. Defendant placed repeated calls to Plaintiff’s home telephone almost
20 every day, causing Plaintiff to receive, at times, more than twenty (20) collection
21 calls a month.
22

23 20. Plaintiff does not owe any debt to NCO or any other debt collection
24 company.

25 21. On or about April 20, 2010, Plaintiff spoke with Defendant and

1 disputed owing any debt to NCO or any other company that may have retained
2 NCO to collect a debt.

3 22. Defendant acknowledged that Plaintiff did not owe any debt and
4 informed Plaintiff that his phone number had been removed from its computer
5 system.
6

7 23. Defendant assured Plaintiff that it would not call him again.
8

9 24. Despite Defendant's statements to cease calling Plaintiff, Defendant
10 continued to contact Plaintiff seeking and demanding payment for a debt he did
11 not owe.

12 25. Then, on or about May 14, 2010, Plaintiff again spoke with Defendant
13 and disputed owing any debt to NCO or any other company that may retained
14 NCO to collect a debt.
15

16 26. Defendant acknowledged that Plaintiff did not owe any debt and again
17 told Plaintiff that his phone number had been removed from its computer system.
18

19 27. Once again, Defendant assured Plaintiff that it would not contact him
20 again.

21 28. However, Defendant continued to make continuous and repeated
22 telephone calls to Plaintiff, calling him as recently as June 9, 2010.
23

24 29. Upon information and belief, Defendant sought to collect a debt from
25 Plaintiff despite the fact that it had knowledge that Plaintiff did not owe the debt.

30. Defendant's actions in attempting to collect the alleged debt were harassing, abusive and highly deceptive.

CONSTRUCTION OF APPLICABLE LAW

31. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

32. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

33. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v.

1 Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA
 2 was not “made for the protection of experts, but for the public - that vast multitude
 3 which includes the ignorant, the unthinking, and the credulous, and the fact that a
 4 false statement may be obviously false to those who are trained and experienced
 5 does not change its character, nor take away its power to deceive others less
 6 experienced.” Id. The least sophisticated consumer standard serves a dual
 7 purpose in that it ensures protection of all consumers, even naïve and trusting,
 8 against deceptive collection practices, and protects collectors against liability for
 9 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at
 10 1318.

11
 12
 13
 14 **COUNT I**
 15 **DEFENDANT VIOLATED THE**
 16 **FAIR DEBT COLLECTION PRACTICES ACT**

17 34. In its actions to collect a disputed debt, Defendant violated the
 18 FDCPA in one or more of the following ways:

- 19 a. Defendant violated of the FDCPA generally;
- 20 b. Defendant violated §1692d of the FDCPA by harassing Plaintiff in
 21 connection with the collection of an alleged debt;
- 22 c. Defendant violated §1692d(5) of the FDCPA, when it caused the
 23 Plaintiff's telephone to ring repeatedly or continuously with the
 24 intent to harass, annoy or abuse Plaintiff;
- 25

- d. Defendant violated §1692e of the FDCPA by using false, deceptive, or misleading representations or means in connection with the collection of a debt;
- e. Defendant violated §1692e(2) of the FDCPA by falsely representing the character, amount, or legal status of any debt;
- f. Defendant violated §1692e(10) of the FDCPA by using false representations or deceptive means to collect or attempt to collect a debt;
- g. Defendant violated §1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- h. Defendant violated §1692f(1) of the FDCPA by collecting an amount not expressly authorized by the agreement creating the debt or permitted by law; and
- i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, BRIAN DONEGAN, respectfully prays for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);

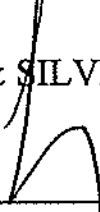
- 1 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
2 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
3
4 c. All reasonable attorneys' fees, witness fees, court costs and other
5 litigation costs incurred by Plaintiff pursuant to 15 U.S.C. §
6 1693k(a)(3); and
7
8 d. Any other relief deemed appropriate by this Honorable Court.
9

10 **DEMAND FOR JURY TRIAL**

11 PLEASE TAKE NOTICE that Plaintiff, BRIAN DONEGAN, demands a
12 jury trial in this case.
13

14
15 DATED: 4/8/11

14 RESPECTFULLY SUBMITTED,
15 KIMMEL & SILVERMAN, P.C.

16
17 By: 
18 Craig Thor Kimmel
19 Attorney ID # 57100
20 Kimmel & Silverman, P.C.
21 30 E. Butler Pike
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